

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.28111 of 2014

and

CRL.M.P.Nos.1 & 2 of 2014

& CRL.M.P.No.1 of 2015

1. Sudhir Kumar Windlass
Director
M/s. Windlass Healthcare Pvt. Ltd.,
 2. Rahul Windlass
Director
M/s. Windlass Healthcare Pvt. Ltd.,
-Petitioners

vs.

Union of India,
represented by Drugs Inspector,
O/o. Deputy Drugs Controller (India),
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Shastri Bhawan Annex,
Chennai - 600 006

....Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records in C.C.No.4426 of 2014 on the file of IV Metropolitan Magistrate Court, Saidapet, Chennai and quash all further proceeding against the petitioners/accused.

For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mr.B.Rabu Manohar, SCGPC GOI

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O R D E R

This petition has been filed challenging the prosecution launched by the respondent against the petitioners for an offence under the Drugs and Cosmetics Act, 1940.

2. There are totally five accused persons in this case and the petitioners are arrayed as A4 and A5.

3. The learned counsel for the petitioner apart from raising various grounds, primarily raised the ground that the petitioners had resigned from the post of Directorship on 14.09.2010 and they were not Directors at the time of the commission of the alleged offence and therefore they should not have been made as accused persons in this case. The learned counsel for the petitioner further submitted that in the entire complaint, there is absolutely no whisper as to how and in what manner the petitioners are involved in the day-to-day affairs of the Company.

4. The learned counsel appearing for the respondent submitted that the petitioners were added as accused persons based on their names being found in the Memorandum of Association filed before the registry of the Company. The learned counsel fairly submitted that, subsequently the department had applied to the concerned authority asking for the details of the signatories belonging to the A1 Company and based on the details received on 12.11.2014, it was found that the names of A4 and A5, was not there and it only contained the names of A1 to A3. The learned counsel submitted that even if this Court wants to quash the proceedings insofar as the petitioners are concerned, the respondent must be permitted to proceed further with the complaint as against A1 to A3.

5. This Court has carefully considered the submission made on either side and also perused the materials available on record.

6. The petitioners before this Court are arrayed as A4 and A5. The Form-32 that has been filed before this Court clearly shows that the petitioners resigned as Directors from the A1 Company on 14.09.2010. The offence in this case is said to have been taken place in the year 2013 much after the resignation of the petitioners. It is also clear from the information received by the respondent, from the Ministry of Corporate Affairs that it is only A1 to A3 who are signatories of the Company.

7. The Hon'ble Supreme Court of India in the case of Anita Malhotra vs. Apparel Export Promotion Council reported in 2012 1 (SCC) 520 has categorically held that Form-32 is a public document which is sterling in quality and the same can be relied upon even though it is produced on the side of the defence.

8. This Judgment will squarely apply to the facts of the present case.

9. The criminal proceedings as against the petitioners is an abuse of process of Court and it requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

10. In the result the proceedings in C.C.No.4426 of 2014 on the file of the IV Metropolitan Magistrate, Saidapet is quashed, insofar as the petitioners are concerned. It is made clear that the Court below shall continue the proceedings as against the other accused persons.

11. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to complete the proceedings in C.C.No. 4426 of 2014, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The IV Metropolitan Magistrate Court, Saidapet, Chennai.
2. The Drugs Inspector,
O/o. Deputy Drugs Controller (India),
Central Drugs Standard Control Organization,
South Zone, 2nd Floor, Shastri Bhawan Annex,
Chennai - 600 006.

+1cc to Mr.P.Ramesh Kumar, Advocate, S.R.No. 56419

+1cc to Mr.B.Rabu Manohar, Advocate, S.R.No. 55658

सत्यमेव जयते

CRL.O.P.No.28111 of 2014
and CRL.M.P.Nos.1 & 2 of 2014
& CRL.M.P.No.1 of 2015

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